

Serial No.: 10/614,140
Docket No.: LOCH1
Amendment dated February 18, 2005
Responsive to Office Action dated December 3, 2004

REMARKS

Prior to the present Office Action, claims 1-24 were pending, with claims 8 and 19 being withdrawn as being drawn to a non-elected species. Claims 1-24 remain pending, and therefore no fees are due, the Amendment being filed within the 3-month time for response.

5 The undersigned wishes to thank the Examiner for a constructive and courteous telephonic interview on February 3, 2005 during which the rejections under 35 U.S.C. §112, second paragraph were discussed.

The Examiner objects to the Abstract because of inclusion of the term "improved." Accordingly, the abstract has been amended to remove this term.

10

Discussion of Indefinite Rejections under 35 U.S.C. §112:

Claims 1, 3, 5, 10-13, and 20 stand rejected under 35 U.S.C. §112, second paragraph, as being indefinite. Prior to a discussion of the main issue, Applicant notes that the tentative term "may" has been removed from claims 3 and 5. Also, claims 10 and 11 have been amended merely to facilitate prosecution, although Applicant disagrees that they are indefinite in their original form and reserve the right to present them at a later date.

To provide further clarity, each independent claim has been amended as indicated above to first set forth the skateboard parameters relative to which the rack is defined. One of skill in the art can easily ascertain these parameters for any given skateboard, and therefore the definition of the security rack as claimed can easily be understood. There does not appear to be a definiteness issue.

The Examiner stated in the telephone interview that terms in the claims that are defined relative to a skateboard are indefinite (or functional) because, quoting from the Office Action, "a skateboard is not an element of the claimed device and it is improper to seek to define claim structure based on a comparison to some unclaimed element." This apparent *per se* standard for 35 U.S.C. §112, second paragraph is not consistent with Federal Circuit law, and runs counter to the directive to examiners against *per se* rules in MPEP §2173.02 (p. 2100-206).